

To: Jayne Carlin/R10/USEPA/US@EPA;Allison Castellan [allison.castellan@noaa.gov];
Allison Castellan [allison.castellan@noaa.gov]
Cc: Don Waye/DC/USEPA/US@EPA[]
From: YON Donald R <YON.Donald@deq.state.or.us>
Sent: Tue 7/10/2012 5:10:50 PM
Subject: RE: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

[mime.txt](#)

[mime.htm](#)

[6217 Mangt. Measures Approval Spreadsheet 7-9-12.docx](#)

carlin.jayne@epa.gov

<http://www.epa.gov/r10earth/tmdl.htm>

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[\(206\) 553-0165](tel:(206)553-0165)

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[\(301\)713-3121, ext. 182](tel:(301)713-3121, ext. 182)

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http://coastalmanagement.noaa.gov/nonpoint/pro_approve.html

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[image003.png](#)
[image004.png](#)

FYI

From: Jayne Carlin [<mailto:Carlin.Jayne@epamail.epa.gov>]
 Sent: Tuesday, July 10, 2012 9:30 AM
 To: Allison Castellan
 Cc: Don Waye; YON Donald R
 Subject: Re: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Hi Allison,

That is good news. I assume we would send out the tribal consultation letters at the same time as go out with the Federal Register Notice on our proposed approval. Is that correct?

Regards,

Jayne Carlin, Watersheds Unit

US EPA, Region 10
1200 6th Ave, Suite 900 (OWW-134)
Seattle, WA 98101-3140
(206) 553-8512, (206) 553-0165 (fax)
carlin.jayne@epa.gov

<http://www.epa.gov/r10earth/tmdl.htm>

Allison Castellan ---07/10/2012 09:28:11 AM---No, OCRM discussed with NMFS/FWS and our GC and we concluded that ESA consultation would not be need

From: Allison Castellan <allison.castellan@noaa.gov>
To: Jayne Carlin/R10/USEPA/US@EPA,
Cc: YON Donald R <YON.Donald@deq.state.or.us>, Don Waye/DC/USEPA/US@EPA
Date: 07/10/2012 09:28 AM
Subject: Re: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

No, OCRM discussed with NMFS/FWS and our GC and we concluded that ESA consultation would not be needed since the federal action to approve OR's program would not have effects on listed sps. However, we do need to consult with the tribes.

On Tue, Jul 10, 2012 at 11:59 AM, Jayne Carlin <Carlin.Jayne@epamail.epa.gov> wrote:

Hi Don,

From what I understand, EPA and NOAS will be going through ESA consultation.

What document are you looking for? I located a box of old OR CZARA stuff and will go through it and see if I can locate your missing document.

Regards,

Jayne Carlin, Watersheds Unit
US EPA, Region 10
1200 6th Ave, Suite 900 (OWW-134)
Seattle, WA 98101-3140
(206) 553-8512, (206) 553-0165 (fax)
carlin.jayne@epa.gov

<http://www.epa.gov/r10earth/tmdl.htm>

YON Donald R ---07/10/2012 08:56:26 AM---I could not find it. Sometime ago, I made pdf files of all the Oregon 6217 program documents and le

From: YON Donald R <YON.Donald@deq.state.or.us>
To: Jayne Carlin/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA, Allison Castellan <allison.castellan@noaa.gov>,
Cc: YON Donald R <YON.Donald@deq.state.or.us>
Date: 07/10/2012 08:56 AM
Subject: RE: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

I could not find it. Sometime ago, I made pdf files of all the Oregon 6217 program documents and letters. This included both Oregon submittals and NOAA/EPA responses and other supporting documents.

Gene had another question for me to get answered: "Will the Oregon CNPCP need to go through ESA consultation prior to approval?" If yes, I assume by NOAA and EPA, not the state.

From: Jayne Carlin [mailto:Carlin.Jayne@epamail.epa.gov]
Sent: Tuesday, July 10, 2012 8:50 AM
To: Don Waye; Allison Castellan
Cc: YON Donald R
Subject: Re: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Hi All,

Do you have any examples of the public notice requesting public comment on EPA/NOAA approval for the full program?

Regards,

Jayne Carlin, Watersheds Unit
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1200 6th Ave, Suite 900 (OWW-134)
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(206) 553-8512, (206) 553-0165 (fax)
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<http://www.epa.gov/r10earth/tmdl.htm>

Don Waye---07/10/2012 06:34:23 AM---Don, I am confirming everything that Allison wrote below. I don't have copies of the 1997/98 conditi

From: Don Waye/DC/USEPA/US
To: YON Donald R <YON.Donald@deq.state.or.us>,
Cc: Jayne Carlin/R10/USEPA/US@EPA, Allison Castellan <allison.castellan@noaa.gov>
Date: 07/10/2012 06:34 AM
Subject: Re: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Don,

I am confirming everything that Allison wrote below. I don't have copies of the 1997/98 conditional approval letters and public notices handy, but they likely exist somewhere in our files. (Like Allison, I only go back to 2002.) If you really need them, let me know.

Also, yes, all 11 other conditionally states are pursuing full approval. For many of these states, the earnestness and vigor of this pursuit was sparked by the Oregon lawsuit. We take this to be a very positive development. Washington's full approval is in the works and Georgia is close. Hawaii and Louisiana have also made great strides, to name a couple of others.

Don Waye

U.S. Environmental Protection Agency
Nonpoint Source Control Branch (OWOW/AWPD)

USPS Mailing Address: Office (FedEx/UPS delivery):
Mail Code 4503T Room 7417H
1200 Pennsylvania Ave, NW 1301 Constitution Ave, NW
Washington, DC 20460 Washington, DC 20004

Phone: (202) 566-1170 Fax: (202) 566-1331
Email: waye.don@epa.gov Website: epa.gov/nps

Allison Castellan ---07/10/2012 09:09:28 AM---Don-- Yes, NOAA/EPA went out for public comment for ALL 22 states that are fully

From: Allison Castellan <allison.castellan@noaa.gov>
To: YON Donald R <YON.Donald@deq.state.or.us>
Cc: Jayne Carlin/R10/USEPA/US@EPA, Don Waye/DC/USEPA/US@EPA
Date: 07/10/2012 09:09 AM
Subject: Re: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Don--

Yes, NOAA/EPA went out for public comment for ALL 22 states that are fully approved, allowing the public to comment on how the state has addressed all conditions that we originally placed on the program back in 1997/1998. We also went out for public comment on all conditional approvals for issued in 1997/1998 although I'm not sure we have copies of the CFRs. That occurred way before my time but I don't recall seeing them in the files. I can check. I believe we do have the Federal Register notices we used to announce the conditional approvals but they don't reflect the date signed/posted. I'm ccing Don Waye in case EPA has those records.

Allison

On Mon, Jul 9, 2012 at 7:45 PM, YON Donald R <YON.Donald@deq.state.or.us> wrote:

Jayne, after further review of Oregon's January 20, 1998 NOAA/EPA Conditional Approval document, I have provided to Gene, what I think is the important information to help answer his question: Were you able to find out if EPA/NOAA went out for public comment for their decisions for the states listed below? The states Gene is referring to I think are the 22 states that have received Final Approval, but his question could also apply to the 11 states, including Oregon, that have received Conditional Approval.

Gene ask me, via e-mail last week, (see below) the following question: Are the state's that have not yet received full approval pursuing approval or are they staying with "interim" approval?

I am looking forward to our telephone conference call tomorrow at 10 AM PST.

From: YON Donald R
Sent: Monday, July 09, 2012 4:34 PM
To: FOSTER Eugene P
Cc: YON Donald R
Subject: RE: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Gene, I just talked with Jayne, who said that all states that have received Final Approval and those, like Oregon, who received Conditional Approval have the same or similar language as was in our January 20, 1998 NOAA/EPA Conditional Approval

document. I have excerpted the key language from NOAA and EPA's cover letter and attached Findings for the Oregon Coastal Nonpoint Program:

I also copied (see below) the OREGON COASTAL NONPOINT PROGRAM RECORD OF DECISION which was attached to the January 20, 1998 NOAA/EPA Conditional Approval document. I will ask Allison Castellan tomorrow, if the Administrative Record for our Conditional Approval Decision is the attached program Record of Decision. I will also ask for a copy of any CFR notice for our 1998 conditional approval.

This letter transmits the Findings for the Oregon Coastal Nonpoint Pollution Control Program, submitted to the National Oceanic and Atmospheric Administration (NOAA) and to the U.S. Environmental Protection Agency (EPA) in accordance with Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). NOAA and EPA are very pleased to inform you that we approve the State's program in accordance with Section 6217(c)(1) of CZARA, subject to the enclosed conditions. The enclosed Findings become effective as of the date of this letter.

JAN 20 1998

FINDINGS FOR THE OREGON COASTAL NONPOINT PROGRAM

FOREWORD

The references in this document refer to the Pollution Prevention and Control Program for Oregon's Coastal Waters, Final Program Submittal July 1995 ("program submittal"). NOAA and EPA have written this document as succinctly as possible. We have relied upon, but do not repeat here, the extensive information that the State included in the program submittal. Further information and analysis is contained in the administrative record for this approval decision and may be reviewed by interested parties at the following locations:

EPA/Office of Wetlands, Oceans and Watersheds Assessment & Watershed Protection Division Nonpoint Source Control Branch
401 M St, SW (4503-F) . Washington, DC 20460 Contact: Kxisten Martin (202/260-7108)

NOAA/Office of Ocean and Coastal Resource Management Coastal Programs Division SSMC-4, N/ORM3 1305 East-West
Highway Silver Spring, MD 20910

Contact: Patty Dornbusch (301/713-3121, ext. 182)

U.S. EPA Region X/Office of Ecosystems and Communities Geographical Implementation Unit 1200 6th Avenue Seattle, WA
98101

Contact: Teena Reichgott (206/553-1601)

OREGON COASTAL NONPOINT PROGRAM RECORD OF DECISION

INTRODUCTION

The requirements of 40 C.F.R. section 1505.2 [Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act (NEPA)] require an agency to prepare a concise public record of decision at the time of its decision on the action proposed in an environmental impact statement. The record of decision shall: (1) state what the decision was; (2) identify all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted. The record of decision may be integrated into any other record prepared by the agency.

In March 1996, the National Oceanic and Atmospheric Administration (NOAA) published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of state and territory Coastal Nonpoint

Pollution Control Programs (coastal nonpoint programs) developed under Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA). The PEIS forms the basis for the environmental assessments NOAA is preparing for each state and territorial coastal nonpoint program submitted to NOAA and the Environmental Protection Agency (EPA) for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a "framework for decision" on individual state coastal nonpoint programs, and no actual decision was made following its publication, NOAA is preparing a record of decision on the approval or conditional approval of each individual state program submitted for review.

Based on the analysis in the EA prepared on the Oregon coastal nonpoint program, NOAA concluded that conditional approval of the program will not result in any significant environmental impacts different from those analyzed in the PEIS. Therefore, the preparation of an EIS on the conditional approval of the Oregon program is not required by section 102 (2) (c) of NEPA or its implementing regulations.

RATIONALE FOR DECISION

1. NOAA and EPA find that the Oregon coastal nonpoint program meets many of the requirements of Section 6217 of the CZARA and will be approved with conditions. To receive final approval of its program, Oregon will need to meet the conditions, which include developing a monitoring plan, completing programmatic issues such as administrative coordination and completing development, of certain aspects of its program addressing agricultural, urban, marinas, and hydromodification sources, as well as the protection of wetlands and riparian areas; and developing additional management measures to be applied to forestry activities.

2. In making the decision on the Oregon program, NOAA and EPA considered three alternatives: approve the program, conditionally approve the program, and deny approval of the program.

The alternative of approving the Oregon program would have a beneficial effect on the environment because it would help to control sources of nonpoint pollution and would also make existing programs more effective by strengthening the link between Federal and Oregon state coastal management and water quality programs. However, in their review of the Oregon program, NOAA and EPA found that the program does not meet all of the requirements of section 6217. Therefore full approval was not a feasible alternative.

The decision to conditionally approve the Oregon program was determined to be the environmentally preferred alternative. Because the conditions are designed to strengthen the program, conditional approval is expected to have even greater beneficial results than those discussed under the full approval alternative, and will avoid the adverse impacts associated with denial of approval, provided that Oregon satisfies the conditions. The immediate implementation of the completed portions of the program will begin to fulfill the intent of Section 6217 by helping to control sources of nonpoint pollution thus resulting in a reduction of pollution reaching coastal waters.

The decision to deny approval of the Oregon program would have the same effect as the "no action" alternative under NEPA. Denial of approval would necessitate reliance on existing nonpoint control efforts and levying penalties on both the state's coastal zone management program and the state's nonpoint pollution program under Section 319 of the Clean Water Act. The denial of approval and the imposition of financial penalties could have an adverse environmental effect because it may cause Oregon-not to implement management measures that are meant to control coastal nonpoint pollution. NOAA and EPA found that the Oregon program meets many of the requirements of section 6217 and that denying approval of the program is not the preferred alternative.

3. NOAA and EPA believe that all practicable means have been adopted to avoid or minimize environmental harm from the decision to conditionally approve the Oregon coastal nonpoint program. The coastal nonpoint program is designed to protect and restore coastal waters from the adverse impact of land-based activities. Upon fulfillment of the conditions identified in the Environmental Assessment and the Findings Document, the Oregon program will contain management measures in conformity with the EPA-developed guidance and enforceable policies and mechanisms to ensure implementation of the management measures. Oregon also must develop a monitoring plan within one year of conditional approval to assess over time the success of the management measures in reducing pollution loads and improving water quality. These actions will minimize the adverse environmental impact of land-based activities on coastal waters.

From: FOSTER Eugene P

Sent: Monday, July 09, 2012 3:48 PM

To: YON Donald R

Subject: RE: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding

Oregon's CNPCP

Hi Don

Were you able to find out if EPA/NOAA went out for public comment for their decisions for the states listed below?

thanks

Gene

From: FOSTER Eugene P

Sent: Tuesday, July 03, 2012 5:01 PM

To: YON Donald R

Cc: FOSTER Eugene P

Subject: RE: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

thansk Don

did EPA/NOAA go out for public comment for their decision?

From: YON Donald R

Sent: Tuesday, July 03, 2012 3:14 PM

To: FOSTER Eugene P

Cc: YON Donald R

Subject: RE: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Gene, The following 22 of the 33 states within the NOAA 6217 Coastal NPS Program have been approved:

1. American Samoa
2. California
3. Connecticut
4. Delaware
5. Florida
6. Guam
7. Maine
8. Maryland
9. Massachusetts
10. Minnesota
11. New Hampshire
12. New Jersey
13. New York
14. North Carolina
15. Northern Mariana Islands

16. Pennsylvania
17. Puerto Rico
18. Rhode Island
19. South Carolina
20. Virgin Islands
21. Virginia
22. Wisconsin

The following 11 states have not received full approval:

1. Alabama
2. Georgia
3. Hawaii
4. Indiana
5. Louisiana
6. Michigan
7. Mississippi
8. Ohio
9. Oregon
10. Texas
11. Washington

I attached the most recent state (NJ) program NOAA and EPA approval document. It mentions nothing about consultation with ESA. It also follows the format of all of Oregon's previous management measures approved by NOAA and EPA. Note the following reference to NJ 1997 conditional approval letter:

"The Federal Agencies' findings for New Jersey's coastal nonpoint program were issued on November 18, 1997. Since that time, New Jersey has undertaken a number of actions to address conditions of approval on its coastal nonpoint program. Based on those actions and on materials the State has provided to document how the conditions have been met, NOAA and EPA find that New Jersey has satisfied all conditions of approval."

COPIED FROM NOAA'S 6217 WEBSITE (http://coastalmanagement.noaa.gov/nonpoint/pro_approve.html):
Coastal Nonpoint Program Approval Findings

NOAA and EPA review and approve state Coastal Nonpoint Programs. All states' Coastal Nonpoint Programs were initially approved with specific conditions (Conditional Approval Findings): most states in 1997-1998 but several states were later entrants to the coastal zone management program so their conditional approval was more recent. The conditions called for states to enhance their management programs and/or develop new implementation mechanisms.

States receive full approval for their Coastal Nonpoint Programs once they have satisfied all their conditions. When NOAA and EPA make the decision to fully approve a state coastal nonpoint program, they develop a Full Approval Decision Memo and publish a notice of intent in the Federal Register. A 30-day public comment period is provided before Full Approval is granted.

Note: If a state/territory does not have an active link to its Full Approval Decision Document, it is because full approval has not yet occurred.

Alabama
 American Samoa
 California

Connecticut
 Delaware
 Florida

Georgia
 Guam
 Hawaii

Indiana
 Louisiana
 Maine

Maryland
 Massachusetts
 Michigan

Minnesota
 Mississippi
 New Hampshire

New Jersey
 New York
 North Carolina

Northern Mariana Islands
 Ohio
 Oregon

Pennsylvania
 Puerto Rico
 Rhode Island

South Carolina
 Texas
 Virgin Islands

Virginia
 Washington
 Wisconsin

[IMAGE]
 [IMAGE]
 [IMAGE]

Alabama

Conditional Approval Findings (6/30/1998)
 Full Approval Decision Document (Pending)

American Samoa

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (7/24/2003)

California

Conditional Approval Findings (6/30/1998)
Full Approval Decision Document (7/17/2000)

Connecticut

Conditional Approval Findings (6/3/1998)
Full Approval Decision Document (11/28/2003)

Delaware

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (2/12/2002)

Florida

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (3/27/2008)

Georgia

Conditional Approval Finding (6/4/2002)
Full Approval Decision Document (Pending)

Guam

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (9/26/2007)

Hawaii

Conditional Approval Findings (6/30/1998)
Full Approval Decision Document (Pending)

Indiana

Conditional Approval Findings (1/15/2008)
Full Approval Decision Document (Pending)

Louisiana

Conditional Approval Findings (6/30/1998)
Full Approval Decision Document (Pending)

Maine

Conditional Approval Findings (2/23/1998)
Full Approval Decision Document (7/8/2003)

Maryland

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (12/13/1999)

Massachusetts

Conditional Approval Findings (9/24/1997)
Full Approval Decision Document (10/3/2001)

Michigan

Conditional Approval Findings (9/24/1997)
Full Approval Decision Document (Pending)

Minnesota

Conditional Approval Findings (3/11/2003)
Full Approval Decision Document (7/27/2006)

Mississippi

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (Pending)

New Hampshire

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (10/4/2001)

New Jersey

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (1/28/2010)
NOAA/EPA Response to Public Comments (12/11/2009)

New York

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (12/5/2006)

North Carolina

Conditional Approval Findings (2/23/1998)

Full Approval Decision Document (5/5/2003)

Northern Mariana Islands

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (8/20/2003)

Ohio

Conditional Approval Findings (6/4/2002)
Full Approval Decision Document (Pending)

Oregon

Conditional Approval Findings (1/13/1998)
Full Approval Decision Document (Pending)

Pennsylvania

Conditional Approval Findings (10/3/1997)
Full Approval Decision Document (5/16/2001)

Puerto Rico

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (10/19/2000)

Rhode Island

Conditional Approval Findings (9/24/1997)
Full Approval Decision Document (4/20/2000)

South Carolina

Conditional Approval Findings (2/23/1998)
Full Approval Decision Document (3/27/2008)

Texas

Conditional Approval Findings (3/31/2003)
Full Approval Decision Document (Pending)

Virgin Islands

Conditional Approval Findings (11/18/1997)
Full Approval Decision Document (2/12/2002)

Virginia

Conditional Approval Findings (2/23/1998)
Full Approval Decision Document (5/16/2001)

Washington

Conditional Approval Findings (6/30/1998)
Full Approval Decision Document (Pending)

Wisconsin

Conditional Approval Findings (9/24/1997)
Full Approval Decision Document (1/30/2003)

From: FOSTER Eugene P
Sent: Tuesday, July 03, 2012 2:29 PM
To: ALDRICH Greg; LOBOY Zach; YON Donald R
Cc: FOSTER Eugene P
Subject: FW: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

The latest from EPA, seems like they were telling us the whole time the need for public comment, but I was focused on the 3 management measures that had received "conditional" approval.

I think it might be worthwhile to ask EPA and NOAA;

1. Will the Oregon CNPCP need to go through ESA consultation prior to approval? They say it may be subject to ESA consultation, but don't say if it is or not, when would we find out?
2. What other states have received full approval of their CNPCP?
3. Are the state's that have not yet received full approval pursuing approval or are they staying with "interim" approval?

Don - can you talk with Jayne and get answers to these questions?

thanks

Gene

From: Jayne Carlin [mailto:Carlin.Jayne@epamail.epa.gov]
Sent: Tuesday, July 03, 2012 2:16 PM
To: Alan Henning; allison.castellan@noaa.gov; David Powers; Don Waye; FOSTER Eugene P; Helen Rueda; Jennifer Wu; LOBOY Zach; MICHIE Ryan; SNOW Patty; WALTZ David; YON Donald R
Cc: David Croxton; Christine Psyk
Subject: FYI: Clarification Letter on Items to be Included in NOAA/EPA's Final Decision and Public Comment Period Regarding Oregon's CNPCP

Hi All:

During the July 2 CZARA 2617 SA Commitments: Forestry & New Development conference call EPA/NOAA agreed to develop and send a letter to OR clarifying what parts of Oregon's CNPCP are subject to public notice and EPA/NOAA approval within the next month. See attached. (See attached file: OR CZARA Measures for Public Comment Clarification 070312.pdf)

Regards,

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<http://www.epa.gov/r10earth/tmdl.htm>

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